

RECEIVED
IN CLERK'S OFFICE

U.S. DISTRICT COURT
MID. DIST. TENN.

Name of Defendant(s)

(If more than one Defendant, list the name and address of each additional Defendant)

Robert Sells, c/o Oreck, 1400 Salem Rd, Cookeville, TN 38506

Diane Johnson, address unknown

Vecteur Direct, c/o Oreck, 1400 Salem Rd, Cookeville, TN 38506

4. Plaintiff sought employment from the Defendant or was employed by the Defendant at

1400 Salem Rd, Cookeville,
Street address City

Putnam, Tennessee, 38506.
County State Zip Code

* Vecteur Direct Call Center
is not at main address.
It is off site on
Willow Ave in
Cookeville, TN

5. Defendant discriminated against Plaintiff in the manner indicated in paragraphs 8 and 9 of this Complaint on or about March 12 2010.
Month Day Year

6. Plaintiff filed charges against the Defendant with the Tennessee Human Rights Commission or the Equal Employment Opportunity Commission charging the Defendant with the acts of discrimination indicated in paragraphs 8 and 9 of this Complaint on or about June 2010.
Month Day Year

7. The Equal Employment Opportunity Commission or the United States Department of Justice issued a Notice of Right to Sue which was received by Plaintiff on July 8 2011, a copy of which Notice is attached.
Month Day Year

8. Because of Plaintiff's (1) _____ race, (2) _____ color, (3) ☒ sex,
(4) _____ religion, (5) _____ national origin, the Defendant:

- a. _____ failed to employ Plaintiff.
- b. _____ terminated Plaintiff's employment.
- c. ☒ failed to promote Plaintiff.
- d. ☒ retaliated against Plaintiff for having filed a charge of discrimination.
- e. ☒ other. Explain: After having a heart attack,

management treated me as though they thought
I couldn't do my job. My abilities were proven
many times by my sales and co-operation.

9. The circumstances under which Defendant discriminated against Plaintiff were as follows:

After returning to work from an FMLA leave due
to a heart attack, I was treated as though I
was disabled and possibly unable to do my
job. I explained to my bosses that I was
perfectly able to resume my position. This was
proven by my ability to perform all work
required of me with excellence. My sales were
 (You may use additional paper, if necessary.) (Continued on separate sheet)

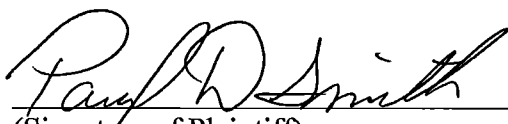
10. The acts set forth in paragraph 8 of this Complaint:

- a. _____ are still being committed by Defendant.
- b. _____ are no longer being committed by Defendant.
- c. ☒ may still be being committed by Defendant.

11. Plaintiff attaches to this Complaint a copy of the charges filed with the Tennessee Human Rights Commission or the Equal Employment Opportunity Commission, which charges are submitted as a brief statement of the facts supporting this Complaint.

WHEREFORE, Plaintiff prays that the Court grant the following relief:

- a. _____ direct that Defendant employ Plaintiff, or
- b. ☒ direct that Defendant re-employ Plaintiff, or
- c. _____ direct that Defendant promote Plaintiff, or
- d. ☒ order other equitable or injunctive relief: defendant
to cover medical & life ins. until replacement ins is obtained
at new employment
- e. ☒ direct that Defendant pay Plaintiff back pay in the amount of
67,114.00 and interest on back pay;
- f. ☒ direct that Defendant pay Plaintiff compensatory damages: Specify
 the amount and basis for compensatory damages: lost property,
medical expenses, and emotional distress totalling \$55,000.00
- g. ☒ direct that Defendant pay Plaintiff punitive damages in the amount of
\$300,000.00 because Defendant engaged in a discriminatory practice or
 practices with malice or with reckless indifference to Plaintiff's federally protected rights,
 as described in paragraphs 8 and 9 above; and that the Court grant such other relief as may
 be appropriate, including costs and attorney's fees.


 (Signature of Plaintiff)

among the top in my department. I also became a great encouragement to other employees by helping increase their sales at a time when the economy was very difficult. Those other employees encouraged and prompted me to apply for a lead in management position. At the same time, I began to have problems in communicating with management regarding equipment failure, unanswered work related questions regarding sales, department improvement ideas, and daily functions of the job. I was told in few words, "I'll get back with you." But, no one ever "got back." This also included trying to communicate with upper management regarding the situation with Diane Johnson.

During the last few months of my employment, Diane Johnson almost daily harassed me. She and I had applied for a team lead position. She was promoted to the position, despite my superior qualifications. From that point on, she worked against me. I could never get answers to questions or proper job related help from her as a lead. She made false and negative comments

about me to other employees.

On my final day of worked employment at the Oreck Call Center, she pushed me through a doorway and told me to get my "ass" back to work. I finished that day of work knowing that I would not and could not return to such a hostile work place. Every attempt I had made to work with the company had failed.

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Paul D. Smith
P.O. Box 623
Baxter, TN 38544

From: Nashville Area Office
220 Athens Way
Suite 350
Nashville, TN 37228

☐

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

846-2010-50623

David J. Smith,
Investigator

(615) 736-5928

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐

The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐

Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐

The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐

Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

☒

The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☐

The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐

Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

Sarah L. Smith

Sarah L. Smith,
Area Office Director

JUL 1 - 2011

Enclosures(s)

(Date Mailed)

cc: ORECK Corporation, Vecteur, LLC
Attn: Deeta B. Ellzey, H.R. Director
565 Marriott Drive, Suite 300
Nashville, TN 37214

**INFORMATION RELATED TO FILING SUIT
UNDER THE LAWS ENFORCED BY THE EEOC**

*(This information relates to filing suit in Federal or State court under Federal law.
If you also plan to sue claiming violations of State law, please be aware that time limits and other
provisions of State law may be shorter or more limited than those described below.)*

PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), or the Age Discrimination in Employment Act (ADEA):

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you receive this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was mailed to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit **before 7/1/10 – not 12/1/10** -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

☐ FEPA

☒ EEOC

846-2010-50623

Tennessee Human Rights Commission

and EEOC

State or local Agency, if any

Name (indicate Mr., Ms., Mrs.)

Mr. Paul D. Smith

Home Phone (Incl. Area Code)

(931) 858-4302

Date of Birth

07-25-1965

Street Address

797 Rickman Monterey Highway

City, State and ZIP Code

Rickman, TN 38580

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

ORECK VECTEUR DIRECT MARKETING

No. Employees, Members

201 - 500

Phone No. (Include Area Code)

(931) 646-7800

Street Address

1400 Salem Road

City, State and ZIP Code

Cookeville, TN 38506

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

☐ RACE ☐ COLOR ☒ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☐ RETALIATION ☒ AGE ☒ DISABILITY ☐ GENETIC INFORMATION
☐ OTHER (Specify)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

03-12-2010

03-12-2010

☐

CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

The above-named employer hired me on February 4, 2008, as a PDC Distribution. The company employs more than 20 employees.

During my employment, I was subjected to a hostile work environment where Robert Sells and Diane Johnson, Department Leads, would harass me. This would occasionally happen during random times during my work schedule. Once I returned from medical leave, I noticed a change of treatment. Younger female co-workers received preferential treatment than male co-workers. On March 12, 2010, Ms. Johnson physically assaulted me in the training room. I immediately resigned due to the constant harassment I had been enduring. I believe the management staff made an obvious effort to create a hostile work environment for a person or persons they did not like, even if someone like me was performing to the highest standards. In addition, I requested on several attempts to meet with the management staff about the issues I was having, which never occurred.

I believe I have been discriminated against because of my age (44), in violation of the Age Discrimination in Employment Act of 1967, as amended and because of my sex (Male), in violation of Title VII of the Civil Rights Act of 1964, as amended and because of my disability, in violation of the Americans with Disabilities Act Amendments Act of 2008.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

NOTARY - When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and believe it to be the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

7-1-2010

Date

Paul D. Smith

Charging Party Signature



PRIVACY ACT STATEMENT: Under the Privacy Act of 1974, Pub. Law 93-579, authority to request personal data and its uses are:

1. **FORM NUMBER/TITLE/DATE.** EEOC Form 5, Charge of Discrimination (11/09).
2. **AUTHORITY.** 42 U.S.C. 2000e-5(b), 29 U.S.C. 211, 29 U.S.C. 626, 42 U.S.C. 12117, 42 U.S.C. 2000ff-6.
3. **PRINCIPAL PURPOSES.** The purposes of a charge, taken on this form or otherwise reduced to writing (whether later recorded on this form or not) are, as applicable under the EEOC anti-discrimination statutes (EEOC statutes), to preserve private suit rights under the EEOC statutes, to invoke the EEOC's jurisdiction and, where dual-filing or referral arrangements exist, to begin state or local proceedings.
4. **ROUTINE USES.** This form is used to provide facts that may establish the existence of matters covered by the EEOC statutes (and as applicable, other federal, state or local laws). Information given will be used by staff to guide its mediation and investigation efforts and, as applicable, to determine, conciliate and litigate claims of unlawful discrimination. This form may be presented to or disclosed to other federal, state or local agencies as appropriate or necessary in carrying out EEOC's functions. A copy of this charge will ordinarily be sent to the respondent organization against which the charge is made.
5. **WHETHER DISCLOSURE IS MANDATORY; EFFECT OF NOT GIVING INFORMATION.** Charges must be reduced to writing and should identify the charging and responding parties and the actions or policies complained of. Without a written charge, EEOC will ordinarily not act on the complaint. Charges under Title VII, the ADA or GINA must be sworn to or affirmed (either by using this form or by presenting a notarized statement or unsworn declaration under penalty of perjury); charges under the ADEA should ordinarily be signed. Charges may be clarified or amplified later by amendment. It is not mandatory that this form be used to make a charge.

NOTICE OF RIGHT TO REQUEST SUBSTANTIAL WEIGHT REVIEW

Charges filed at a state or local Fair Employment Practices Agency (FEPA) that dual-files charges with EEOC will ordinarily be handled first by the FEPA. Some charges filed at EEOC may also be first handled by a FEPA under worksharing agreements. You will be told which agency will handle your charge. When the FEPA is the first to handle the charge, it will notify you of its final resolution of the matter. Then, if you wish EEOC to give Substantial Weight Review to the FEPA's final findings, you must ask us in writing to do so within 15 days of your receipt of its findings. Otherwise, we will ordinarily adopt the FEPA's finding and close our file on the charge.

NOTICE OF NON-RETALIATION REQUIREMENTS

Please **notify** EEOC or the state or local agency where you filed your charge **if retaliation is taken against you or others** who oppose discrimination or cooperate in any investigation or lawsuit concerning this charge. Under Section 704(a) of Title VII, Section 4(d) of the ADEA, Section 503(a) of the ADA and Section 207(f) of GINA, it is unlawful for an *employer* to discriminate against present or former employees or job applicants, for an *employment agency* to discriminate against anyone, or for a *union* to discriminate against its members or membership applicants, because they have opposed any practice made unlawful by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the laws. The Equal Pay Act has similar provisions and Section 503(b) of the ADA prohibits coercion, intimidation, threats or interference with anyone for exercising or enjoying, or aiding or encouraging others in their exercise or enjoyment of, rights under the Act.